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Application of Simon Frani
Serial No. 09/922,233 filed 8/3/2001
Response of 8/24/2006 to Office Action of 2/24/2006

Remarks

Receipt is acknowledged of the Office Action of February 24, 2006. Reconsideration of the application and a three month extension of the time for response are hereby requested. The Commissioner is hereby authorized to charge Deposit Account No. 50-1604 for all fees required, and it is requested that any overpayments be credited thereto.

In the Office Action, all of the claims were rejected under 35 U.S.C. §103(a) based on Fructus et al. (US 2002/0025303A1) in combination with Brooks II. Applicant respectfully disagrees with the prior rejections, but has amended one of the independent claims to attempt to facilitate arrival at allowable subject matter therein. The following remarks are directed to that amended claim. Reconsideration of the rejection thereof is respectfully requested.

Claim 19 recites a method using a composition which includes MDT-5, a combination of a form of Vitamin A, a form of Vitamin C, a form of Vitamin E, a form of Vitamin D, and a form of Vitamin B3. As recited therein, that claim has been amended to use the term "consisting of"; i.e. the composition excludes the presence of other forms of those vitamins.¹

This is not suggested by the art of record. To one of ordinary skill, Fructus and Brooks would be taken to teach one could include Brooks' ascorbic acid polypeptide form of Vitamin C (Vitazyme C®) as part of the skin treatment composition. But the presently amended claim specifically recites the opposite – that the form of Vitamin C used may not include ascorbic acid polypeptide, the Vitazyme

¹ The composition comprises MDT-5, which consists of five particular vitamin forms. In other words, with respect to materials other than those vitamins, other types of components may be present in the composition. However, with respect to those particular vitamins, other forms are excluded.

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C® form of that vitamin.

It is respectfully submitted that, to date, there is no evidence in the record why it would be obvious to exclude the use of Vitazyme C®, or to limit the composition as recited by the claim. Rather, if other Vitazyme® polypeptides of Brooks II are used, one of ordinary skill would expect to use Vitazyme C® as well. Why would someone use several other Vitazymes but expressly not use Vitazyme C®?

It is recognized that Applicant did not invent the individual components of the invention, whether the Vitazymes® or other vitamins. However, it is respectfully submitted that Applicant invented this particular combination of components, a particular combination not taught or suggested by any of the art of record. The recited composition is a preferred embodiment developed by applicant based upon his research — yet nothing within the art indicates why this particular composition should be preferred. There is simply no evidence in the record why one would exclude ostensibly suitable forms of vitamins from the claimed composition. These types of answers were developed by applicant using research and experimentation; they cannot be fairly answered using hindsight.

As is well known, to establish a *prima facie* case of obviousness, three basic criteria must be met: suggestion or motivation to modify the reference or to combine reference teachings; reasonable expectation of success; and that the prior art reference (or references when combined) teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure". See, MPEP §2143 (Eighth Edition 2001; May 2004 Revision).

Yet, these criteria have not been met. For example, the references (individually or when

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combined) do not teach or suggest a composition which uses certain Vitazymes® but specifically excludes the use of Vitazyme C®. Rather, both the Brooks II and Fructus references would be taken to teach or suggest inclusion of Vitazyme C® as a Vitamin C form in the skin composition treatment.

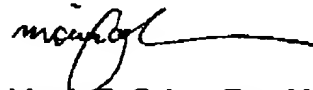
Furthermore, under the language of Section 103(a), for an obviousness rejection is required that the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the subject matter to which the subject matter pertains. There is no such showing here. It is entirely counterintuitive to reject the use of the Vitamin C polypeptide (Vitazyme C®) when the other Vitazymes®/polypeptides are being used.

Previously, the Examiner had allowed several claims on several occasions, which are now rejected. However, nothing has been cited in the art justifying the new rejections, which contradict the Patent Office's holding several times in prior Office Actions. Nor is it obvious to provide the particular ranges of materials previously claimed – the purpose of research and experimentation is to determine what works effectively and what does not. Accordingly, it is respectfully submitted the previously allowed and now rejected claims should all be allowed as well.

Accordingly, as discussed above, favorable action is respectfully requested.

Dated: August 24, 2006

Respectfully submitted,



Morris E. Cohen (Reg. No. 39,947)
1122 Coney Island Avenue, Suite 217
Brooklyn, New York 11230
(718) 859-8009 (telephone)
(718) 859-3044 (facsimile)